

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

RONALD R. LACHAPELLE,)
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PLAINTIFF)
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v.)
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BERKSHIRE LIFE INSURANCE)
COMPANY,)
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DEFENDANT)

Civil No. 97-98-P-H

ORDER ON MOTION TO DISMISS

This lawsuit arises out of an insurance company's termination of disability insurance benefits to a disabled claimant when he was incarcerated in June of 1992. According to the Amended Complaint, the plaintiff became disabled in February of 1991 and filed a claim for benefits at that time. The insurance company paid him monthly benefits after the prescribed waiting period, namely from April, 1991, until the plaintiff was sent to prison in June of 1992. At that time the insurance company terminated his benefit payments stating that they might be resumed when he was released from prison.

COUNT I—BREACH OF CONTRACT

The policy in question provides that no lawsuit "may be brought after three years from the time that written proof of loss is required to be furnished" and written proof of a loss

must be provided “within 90 days after the end of the period for which [the insurance company is] liable.” This lawsuit began with the filing of the Complaint on March 28, 1997. Clearly, therefore, the contractual limitation period has run on the insurance company’s decision in June of 1992 to terminate benefits. The plaintiff seems to suggest that each month is a new decision not to pay benefits thereby starting the limitations period running anew. That is an unreasonable reading of the contract provisions, however. Unless the plaintiff/beneficiary has a new basis for his claim to benefits and makes a new proof of loss, no new limitations period begins each month.

The plaintiff’s Amended Complaint suggests that he did make a new claim in March of 1995. There is no suggestion, however, that this proof of loss presented the insurance company with something new. If it did—for example, if that was the date of his release from prison and he presented that new development to the insurance company—he can seek to amend his complaint within twenty (20) days of this Order.

COUNT II—ESTOPPEL

The plaintiff asks that the court estop the defendant from raising the contractual limitation period as a defense on the grounds that the insurance company misrepresented the policy and ignored it when it stopped payment of the disability benefits to the plaintiff because of his incarceration. Pl.’s Mem. at 3. Even if the insurance company’s action amounted to a misrepresentation of its contractual obligations, it was not the sort of

misrepresentation that would toll a limitations period. The insurance company never told the plaintiff anything that would delay him from filing a lawsuit he was otherwise disposed to file to obtain his benefits. Townsend v. Appel, 446 A.2d 1132, 1134 (Me. 1982) (“Only upon a demonstration that the plaintiff had in fact intended to seek legal redress on his claim during the _____ period can his failure to file suit be specifically attributed to the defendant’s conduct”).

COUNT III—INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

The theory for this claim is that the plaintiff had a vulnerable mental condition having become disabled due to a mental breakdown and that the defendant’s action in terminating his disability benefits upon incarceration (the plaintiff, a stockbroker, pleaded guilty to theft by misapplication of property and was sentenced to a term of four years in prison, see Pl.’s Mem. at 2) meets the standard of outrageousness for the Maine tort of intentional infliction of emotional distress, namely, that it was “so extreme and outrageous as to exceed all possible bounds of decency and [that it] must be regarded as atrocious, and utterly intolerable in a civilized community.” Colford v. Chubb, 687 A.2d ___, 616 (Me. 19___).

The insurance company’s action here, as a matter of law, does not rise to that level. It may have been a breach of the insurance contract (a decision I do not make) to terminate the benefits upon the plaintiff’s incarceration, but the action did not reach Maine’s high standard for intentional infliction of emotional distress. There is at least an argument that

the plaintiff's inability to earn income upon his incarceration was no longer a result of his disability, but rather a consequence of his guilty plea and imprisonment. The plaintiff also appears to argue that a low settlement offer made by the defendant furnishes another basis for this claim. Since the insurance company was free to make no settlement offer, the settlement offer made here, however low, cannot sustain the cause of action.¹

COUNT IV—PUNITIVE DAMAGES

Since the underlying tort fails, the punitive damages claim cannot survive.

COUNT V—STATUTORY CLAIM FOR LATE PAYMENT

Maine statutes provide that when a claim for benefits is made it must be either disputed or paid within 30 days; otherwise it becomes overdue. 24-A M.R.S.A. § 2436(1). Here, the Complaint alleges in ¶ 9 that the insurance company upon terminating benefits when the plaintiff was incarcerated in June of 1992 “advised plaintiff that while it may have to pay plaintiff his disability benefits later when he is released from incarceration, it would not pay him during his incarceration. . . .” Thus, the Complaint itself alleges that the insurance company did dispute the claim simultaneously with its termination of benefits.

¹ The plaintiff suggests that discovery should be allowed. My ruling, however, is that he has failed to state a claim under Fed. R. Civ. P. 12(b)(6). Discovery is not a remedy for that failure.

Because the insurance company did dispute the claim² (there is no requirement that the dispute made in writing, Depositors Trust Co. v. Farm Family Life Ins. Co., 445 A.2d 1014, 1018 (Me. 1982)), the plaintiff has no cause of action for an overdue payment under the Maine insurance statute.

CONCLUSION[

Consequently, the defendant's motion to dismiss the Complaint is **GRANTED**.

SO ORDERED.

DATED THIS 29TH DAY OF AUGUST, 1997.

D. BROCK HORNBY
United States Chief District Judge

² The plaintiff argues that "the claim was clearly undisputed and the benefits were due" because it was a breach of the policy for the insurance company to deny benefits because of incarceration. Whether or not the plaintiff is correct is a matter of contract law, the insurance company *did* dispute the claim because of incarceration and did notify the plaintiff as alleged in the Amended Complaint.